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# Message Text

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INFO OCT-01 EA-07 ISO-00 AGR-05 CIAE-00 COME-00 INR-07

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TO AMEMBASSY MANILA PRIORITY

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E.O. 11652: N/A

TAGS: ETRD, RP

SUBJECT: COTTON CONTRACT PROBLEM

REF: (A) STATE 220820 (B) MANILA 12734 (C) STATE 201935

1. DEPARTMENT BELIEVES THAT PROPOSAL REPORTED REF (B) REPRESENTS SIGNIFICANT BREAKTHROUGH IN EFFORT TO RESOLVE LONGSTANDING YUPANGCO - CIEC DISPUTE. DBP AND YUPANGCO ARE TO BE COMMENDED FOR THEIR EFFORT WHICH HAS CREATED A REAL POSSIBILITY FOR FINAL RESOLUTION OF COTTON CONTRACT PROBLEM.

2. ACEA AND CIEC RESPONSE TO PROPOSAL HAS BEEN EXCELLENT. THEY REALIZE THAT YUPANGCO IS MAKING GENUINE EFFORT TO REACH SETTLEMENT OF DISPUTE WHICH CAN BE ACCEPTED BY ALL PARTIES. HOWEVER, CIEC POINTS OUT THAT SHIPMENT OF 1280
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BALES AT CONTRACT PRICES, WHICH ARE BELOW CURRENT MARKET

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PRICES, WOULD MEAN THAT CIEC WOULD BE OUT OF POCKET FOR CARRYING CHARGES ON COTTON HELD TO COVER CONTRACTS OVER PERIOD OF DISPUTE OR FOR DIFFERENCE IN COST OF PURCHASING COTTON TO FILL CONTRACTS IN INSTANCES WHERE STOCKS HAVE BEEN RELEASED. CIEC HAS INDICATED THAT IF THIS FEATURE OF PROPOSAL CAN BE MODIFIED ALONG LINES SET FORTH BELOW AND OTHER ELEMENTS OF PROPOSAL PUT INTO ACCEPTABLE LEGAL FORM, THEY WOULD BE PREPARED TO EFFECT THE SHIPMENT AND CANCELLATION ON REMAINING CONTRACTS IN ACCORDANCE WITH YUPANGCO PROPOSALS.

3. ACCORDINGLY, CIEC PROPOSES THAT ITEM NUMBER 4 OF YUPANGCO PROPOSAL BE AMENDED AS FOLLOWS:

"CIEC WILL COLLECT CARRYING CHARGES ON COTTON TO BE SHIPPED IN THE AMOUNT OF 50 POINTS (ONE-HALF CENT PER POUND) PER MONTH FOR A PERIOD OF 28 MONTHS ON 1,000 BALES UNDER CONTRACT CAG-440 AND FOR A PERIOD OF 23 MONTHS ON 280 BALES UNDER CONTRACT CAH-31."

4. CIEC WOULD ALSO REQUIRE CONFIRMATION THAT YUPANGCO COMMITMENT TO "DISREGARD" COURT JUDGMENT MEANS THAT JUDGMENT WOULD BE VACATED AND LEGAL LIABILITY OF CIEC REMOVED. CIEC NOT WILLING TO PROCEED IF YUPANGCO INTENT IS TO FOREGO COMPENSATION UNDER COURT JUDGMENT BUT TO ALLOW JUDGMENT TO REMAIN IN EFFECT. REMAINING CONTRACTS WOULD BE DULY CANCELLED AND PARTIES WOULD AGREE TO MAKE NO CLAIMS OR COUNTER CLAIMS IN RESPECT TO THEM.

5. IF YUPANGCO WILLING TO PROCEED ON BASIS OUTLINED ABOVE CIEC WOULD REQUIRE LETTER OF CREDITCOVERING PRICE AND CARRYING CHARGES FOR 1280 BALES TO BE OPENED BY SEPTEMBER 24, WITH SHIPMENT TO TAKE PLACE BY OCTOBER 31. LETTER OF CREDIT SHOULD BE VALID THROUGH NOVEMBER 20.

6. IF ABOVE TERMS UNACCEPTABLE AND IF YUPANGCO DOES NOT WISH TO CONTINUE TO PURSUE AGREEMENT ON SHIPMENT, CIEC ALSO WILLING TO GO BACK TO PREVIOUS OFFER. I.E., CIEC WOULD CANCEL ALL CONTRACTS IF COURT JUDGMENT IS VACATED AND BOTH SIDES AGREE THAT THERE WILL BE NO FURTHER CLAIMS
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OR COUNTER CLAIMS.

7. ACEA REPORTS CIEC HAS INDICATED THAT PROPOSAL OUTLINED PARA 3-5 REPRESENTS MAXIMUM SACRIFICE. COST TO YUPANGCO OF 1280 BALES TO BE SHIPPED BY CIEC WOULD BE WITHIN A FEW PERCENTAGE POINTS OF MARKET PRICE OF COVERED COTTON, BASEDONCURRENT PRICE SPOT QUOTATIONS. THUS CIEC WOULD IN EFFECT FOREGO ANY COMPENSATION FOR LOSSES INCURRED DURING

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THE 2 AND 1/2 YEARS THESE CONTRACTS HAVE BEEN IN DISPUTE.
IN VIEW OF THESE CONSIDERATIONS, FIRM DOES NOT BELIEVE
IT CAN ACCEPT ANY SETTLEMENT ON TERMS WHICH WOULD
CAUSE IT FURTHER FINANCIAL LOSS.

8. WHILE WE RECOGNIZE THAT YUPANGCO HAS EMPHASIZED FINAL
NATURE OF ITS PROPOSAL, APPARENT CLOSENESS OF PARTIES TO
SETTLEMENT AND POSITIVE RESPONSE OF CIEC TO YUPANGCO
POSITION ENCOURAGE US TO HOPE THAT DBP CAN PERSUADE
YUPANGCO TO LOOK AGAIN AT ITS POSITION. ACCORDINGLY,
DEPARTMENT RECOMMENDS THAT EMBASSY PRESENT CIEC RESPONSE
TO DBP IN FINAL EFFORT TO REACH NEGOTIATED SETTLEMENT
OF THIS PROBLEM. EMBASSY SHOULD STATE THAT USG BELIEVES
THAT CIEC OFFER TO SETTLE FOR WHAT IS ESSENTIALLY CURRENT
MARKET PRICE IS RESPONSIVE AND EXPRESS HOPE THAT DBP
WOULD SEE OFFER IN SAME LIGHT AND URGE YUPANGCO TO
SETTLE ON THIS BASIS, OR ALTERNATIVELY, TO ACCEPT CIEC
OFFER TO CANCEL CONTRACTS AND VACATE COURT JUDGMENT.

9. EMBASSY IS REQUESTED TO REPORT RESPONSE TO
REPRESENTATION ASAP. IF OFFER IS ACCEPTABLE, PARTIES
MUST, OF COURSE, FINALIZE DETAILS DIRECTLY. USG MAKING
THIS APPROACH IN HOPE DISPUTE WILL FINALLY BE RESOLVED;
IF DBP BELIEVES FURTHER NEGOTIATIONS ARE NECESSARY, WE
WOULD HOPE THAT THEY WOULD ENCOURAGE YUPANGCO TO WORK
OUT ANY REMAINING DIFFERENCES DIRECTLY WITH CIEC. KISSINGER

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